

Supreme Court Authorizes Lawless Wiretapping

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America's Supremes are notoriously hard right. Equal justice under law is just a figure of speech. Rule of law principles and egalitarian fairness don't matter. Power politics corrupts the High Court. It lacks legitimacy.

Five Supreme Court justices are Federalist Society (FS) members. They include Chief Justice John Roberts, Antonin Scalia, Samuel Alito, Anthony Kennedy, and Clarence Thomas. They're ideological extremists.

FS began 30 years ago at Harvard, Yale and University of Chicago law schools. Initially it was a student organization. It challenges orthodox liberalism. It corrupts itself in the process.

It advocates rolling back civil liberties. It wants New Deal social policies ended. It supports imperial wars, corporatism, and police state harshness.

It wants reproductive choice, government regulations, labor rights, and environmental protections ended. It spurns justice in defense of privilege. It defiles constitutional protections doing so.

Justice Elena Kagan is ideologically sympathetic. She brags about loving the Federalist Society. As Harvard Law School dean, she hired Bush's outgoing Office of Legal Counsel director, Jack Goldsmith. Francis Boyle called him a war criminal.

Last September, Congress overwhelmingly passed the 2012 FISA Amendments Reauthorization Act. Obama signed it into law. He called doing so a national security priority. He lied. It reflects police state harshness.

It's lawless without legitimacy. It extends the 2008 FISA Amendments Act (FAA). It's for another five years.

It authorizes warrantless spying. It does so without naming names or probable cause. It violates Fourth Amendment protections. It states:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Overseas phone calls, emails, and other communications of US citizens and permanent residents may be monitored without court authorization. Perhaps domestic ones are covertly. Anything goes is policy.

Probable cause isn't needed. Warrantless electronic eavesdropping is intrusive and lawless. Everyone is vulnerable for any reason or none at all. Vague language allows virtually anything.

Constitutional protections don't matter. They're null and void. What Bush began, Obama embraces. Things are worse than ever. Full-blown tyranny remains a hair's breath away. Obama governs by diktat authority.

The ACLU filed suit. It passed through lower courts to the Supremes. Last October, High Court justices heard oral arguments. *Clapper v. Amnesty International* challenged the constitutionality of warrantless spying.

On February 26, the Supreme Court ruled. It dismissed ACLU's case. It violated constitutional protections doing so. It wasn't the first time inviolable law was spurned.

On February 27, the [Electronic Frontier Foundation](#) (EFF) commented. The Court didn't address FFA's constitutionality, it said. It ruled against lawyers, journalists, human rights groups, and others challenging protections too important to deny.

It said they couldn't prove surveillance was "certainly impending." They didn't have required standing to sue.

Saying so is deeply troubling. It's an absurdity on its face. It's a standard never before used. Imposing it denies the legitimate right to sue. Doing so reflects police state justice.

"In other words," said EFF, "since (plaintiffs) did not have definitive proof" of what Washington keeps secret, "they cannot challenge" the law's constitutionality.

Saying so defies reason and rule of law fairness. America's High Court struck another blow against freedom. Good news remains, said EFF.

Its *Jewel v. NSA* suit isn't affected. The spy agency targets millions of ordinary Americans lawlessly. Doing so is policy. Government officials remain unaccountable. Evidence is indisputable.

NSA whistleblowers and former AT&T employee Mark Klein provided it. It proves the telecom giant routes Internet traffic to a secret San Francisco facility. NSA controls it.

EFF challenged responsible government officials. They include George Bush, Dick Cheney, Alberto Gonzales, and others. They ordered and participated in warrantless domestic surveillance. Obama and other administration officials do it now.

In 2009, his administration moved for dismissal. It claimed permitting it would require revealing "state secrets."

Lower and appeals courts disagreed. The case remains active. Perhaps it'll reach the High Court. Losing *Clapper* makes *Jewel* more important.

It's "one of the last remaining hopes for a court ruling on the legality of" lawlessly surveilling Americans, said EFF. It's been ongoing for over a decade.

Ninth US Circuit Court of Appeals judges granted *Jewel* standing. They said:

“Jewel has much stronger allegations of concrete and particularized injury than did the plaintiffs in Amnesty International. Whereas they anticipated or projected future government conduct, Jewel’s complaint alleges past incidents of actual government interception of her electronic communications.”

Major hurdles remain to be overcome. The Supreme Court ruled future harm must be “certainly impending.” It’s required to sue, they said. It obstructs future lawsuits.

It’s “very troubling,” said EFF. It’s especially so “in the context of cases involving secret surveillance.”

Future conduct can’t be predicted. Ruling so denies all challenges. None can be settled equitably. Anything can be claimed for any reason to deny them.

Justice Breyer dissented on Clapper. He explained certainly impending’s absurdity, saying:

“One can, of course, always imagine some special circumstance that negates a virtual likelihood, no matter how strong.”

“But the same is true about most, if not all, ordinary inferences about future events.”

“Perhaps, despite pouring rain, the streets will remain dry (due to the presence of a special chemical).”

ACLU deputy legal director, Jameel Jaffer, said the High Court ruling denies “meaningful judicial review and leaves Americans’ privacy rights to the mercy of the political branches.”

“More than a decade after 9/11, we still have no judicial ruling on the lawfulness of torture, of extraordinary rendition, of targeted killings or of the warrantless wiretapping program.”

“These programs were all contested in the public sphere, but they have not been contested in the courts.”

Police state justice remains policy.

Secret lawless surveillance alone is troubling. It differs from physical searches. It’s hidden. Targets don’t know they’re spied on or why. Innocent people suffer. Constitutional protections are denied.

Reasons for doing so don’t wash. According to Supreme CourtThink, Washington can deny victims standing.

Constitutionality doesn’t matter. Actions can be kept secret. Challengers can’t sue unless government agrees. Unfettered power is institutionalized. Rule of law principles don’t apply.

FAA permits sweeping surveillance. Categories of people can be targeted. Millions are affected at the same time. No one knows what’s going on or why.

Police state harshness is policy. Innocence is no justifiable defense. Due process and judicial fairness don’t matter. What Obama officials say goes. They operate extrajudicially. High Court justices approve. Doing so makes them complicit. There’s no place to hide.

Electronic communications can be monitored. Probable cause isn’t needed. Obama officials

convinced Ninth Circuit justices to dismiss warrantless wiretapping challenges earlier.

In *Al Haramain Islamic Foundation v. Obama* (August 2012), they dismissed plaintiff's challenge. They did so on what's called "sovereign immunity."

It prevents government, its agencies and departments from being sued without consent. It stems from earlier practice. It comes from notions that monarchs can do no wrong. It violates fundamental freedoms doing so.

EFF hopes *Al Haramain* won't affect *Jewel*. It raises "many causes of action." They embrace more than what 50 USC, Section 1810 covers. It's US law explaining actual and punitive monetary damages.

Jewel wants warrantless surveillance stopped. It wants millions of innocent Americans protected. It wants proper warrants and judicial oversight. It wants rule of law principles upheld.

EFF moved for a lower court *Jewel* ruling. It wants its case to go forward. It wants Washington held accountable. It wants lawless NSA spying stopped.

It said "FISA preempts the state secret privilege." District court hearings will begin this fall. Whether High Court ones follow won't be known for some time. How they rule most often remains deeply troubling.

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